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10 Attorneys for Defendants  
11 Patenaude & Felix, A Professional Corporation  
12 and Raymond Alcide Patenaude

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN JOSE DIVISION

16 PATRICIA CLAIRE BANKSTON,

17 Plaintiff,

18 vs.

19 PATENAUDE & FELIX, A  
20 PROFESSIONAL CORPORATION,  
21 a California Corporation, and  
22 RAYMOND ALCIDE  
23 PATENAUDE, individually and in  
24 his official capacity,

25 Defendants.

CASE NO.: C 07 03396 JW PVT

**DECLARATION OF TOMIO B.  
NARITA IN SUPPORT OF  
DEFENDANT'S OBJECTIONS  
TO DECLARATION OF FRED  
SCHWINN IN SUPPORT OF  
AWARD OF ATTORNEY'S  
FEES AND COSTS**

NO HEARING DATE NOTICED

1 I, Tomio B. Narita, declare:

2 1. I am an attorney duly licensed to practice before all courts of the State  
3 of California. I am a partner with Simmonds & Narita LLP, counsel of record for  
4 the defendants in this action, Patenaude & Felix, A Professional Corporation and  
5 Raymond Alcide Patenaude (collectively, "Defendants"). I make this declaration  
6 in support of Defendants' Objection to Declaration of Fred Schwinn in Support of  
7 Award of Attorney Fees and Costs. I have personal knowledge of the facts set  
8 forth below, and could and would testify thereto if called upon to do so.

9 2. On December 19, 2007, Defendants served an Offer of Judgment on  
10 Plaintiff pursuant to Rule 68 of the Federal Rules of Civil Procedure, a true and  
11 correct copy of which is attached hereto as **Exhibit A**. Plaintiff did not accept  
12 Defendants' Rule 68 Offer.

13 3. Plaintiff did not attempt to meet and confer with regards to her  
14 requested attorney's fees and costs prior to filing the declarations in support of  
15 that request. In fact, there has been no communication between counsel for  
16 Defendants and counsel for Plaintiff with regards to this matter since before the  
17 date of the Court's Order Granting Summary Judgment dated June 13, 2008.

18 I declare under penalty of perjury under that the foregoing is true and  
19 correct. Executed at San Francisco, California on this 15th day of July, 2008 at  
20 San Francisco, California.

21  
22 By: s/Tomio B. Narita  
23 Tomio B. Narita  
24  
25  
26  
27  
28

Exhibit A

PATENAUDE & FELIX, APC  
ATTORNEYS AT LAW  
4545 MURPHY CANYON ROAD, 3<sup>RD</sup> FLOOR  
SAN DIEGO, CALIFORNIA 92121-4543  
TELEPHONE (858) 244-7600 FACSIMILE (858) 836-0320

PATENAUDE & FELIX, A.P.C.  
Raymond A. Patenaude, Esq. (SBN 128855)  
Matthew B. Golding, Esq. (SBN 171123)  
4545 Murphy Canyon Road, 3<sup>rd</sup> Floor  
San Diego, California 92123  
(858) 244-7600 Fax (858) 836-0318  
[mattg@pandf.us](mailto:mattg@pandf.us)  
[rayp@pandf.us](mailto:rayp@pandf.us)

Attorneys for Defendants,  
PATENAUDE & FELIX, A.P.C. and RAYMOND ALCIDE PATENAUDE

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

PATRICIA CLAIRE BANKSTON,

Plaintiff,

v.

PATENAUDE & FELIX, A.P.C. and;  
RAYMOND ALCIDE PATENAUDE

Defendants.

CASE NO.: C 07-03396 JW-PVT

OFFER OF JUDGMENT

[FRCP RULE 68]

**TO: PLAINTIFF ABOVE-NAMED**, by and through her Attorney:

Frederick W. Schwinn, Esq.  
Consumer Law Center Inc  
12 S. 1st Street, #1014  
San Jose, CA 95113

Pursuant to Rule 68 of the Federal Rules of Civil Procedure, Defendant Patenaude & Felix, A.P.C. and Raymond Alcide Patenaude, hereby offer to allow judgment to be take against them jointly, and in favor of Plaintiff as follows:

1. Judgment shall be entered against Patenaude & Felix, A.P.C. and Raymond A. Patenaude in the total amount of One Thousand One Dollars (\$1,001.00) for statutory damages, plus Zero Dollars (\$0.00) in actual damages, plus attorneys fees and taxable costs in the amount of Two-Thousand Five Hundred Dollars (\$2,500.00).

///

PATENAUDE & FELIX, APC  
ATTORNEYS AT LAW  
4545 MURPHY CANYON ROAD, 3RD FLOOR  
SAN DIEGO, CALIFORNIA 92123-4563  
TELEPHONE (619) 744-7600 FACSIMILE (619) 816-0320

2. The judgment entered in accordance with this Offer of Judgment is to be in total settlement of any and all claims by Plaintiff against these Defendants, and all individuals and entities who could be held vicariously liable for the Defendants' alleged actions or omissions, said judgment shall have no effect whatsoever except in settlement of those claims; and

3. This Offer of Judgment is made sole for the purposes specified in Rule 68, and is not to be construed either as an admission that Patenaude & Felix, A.P.C. or Raymond Alcide Patenaude is liable in this action, or that Plaintiff has suffered any damage.

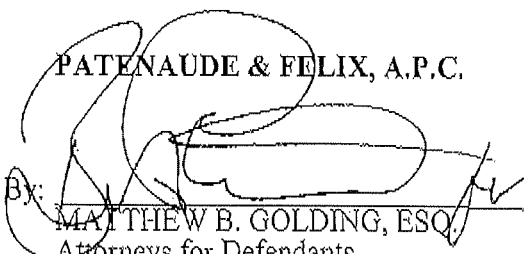
In accordance with Rule 68, if this Offer of Judgment is not accepted by Plaintiff within ten (10) days after service of the Offer, the Offer shall be deemed withdrawn and any evidence of this Offer will be inadmissible except in any proceeding to recover costs.

In accordance with Rule 68, if this Offer of Judgment is not accepted by Plaintiff and the judgment finally obtained by Plaintiff is not more favorable than this Offer, Plaintiff must pay its costs incurred after making this Offer, as well as, Defendants' attorney's fees and costs.

///

Dated: December 17, 2007

PATENAUDE & FELIX, A.P.C.

By:   
MATTHEW B. GOLDING, ESQ.  
Attorneys for Defendants,  
PATENAUDE & FELIX, A.P.C. and  
RAYMOND ALCIDE PATENAUDE

PATENAUDE & FELIX, APC  
ATTORNEYS AT LAW  
4545 MURPHY CANYON ROAD, 3<sup>RD</sup> FLOOR  
SAN DIEGO, CA 92123  
TELE: (858) 244-7600 FAX: (858) 836-0318

**PATENAUDE & FELIX A.P.C.**

Raymond A. Patenaude, Esq. (#128855)

Victor S. Patenaude, Esq. (#216342)

Michael R. Boulanger, Esq. (#226294)

Daniel L. Vinson, Esq. (#214005)

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San Diego, CA 92123

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Attorneys for Plaintiff

CAPITAL ONE BANK

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SANTA CLARA, SAN JOSE DIVISION**

CAPITAL ONE BANK

Plaintiff,

v.

PATRICIA BANKSTON,

and DOES 1 through 15 inclusive,

Defendant(s).

Case No. C 07-03396 JW-PVT

**PROOF OF SERVICE**

I, Sarah Reddicono, declare:

I am a citizen of the United States and I am employed in the County of San Diego, State of California; I am over the age of 18 years and not a party to this action; my business is 4545 Murphy Canyon Road Third Floor San Diego, CA 92123.

I further declare that I am readily familiar with the business practice of Patenaude & Felix, APC for service of documents, that documents served by facsimile are transmitted in and the original deposited with the United States Postal Service in our ordinary course of business on the same day, the documents served by mail are deposited with the United States Postal Service in the ordinary course of business the same day and that documents served personally are delivered the same day.

///

PATENAUE & FELIX, APC  
ATTORNEYS AT LAW  
4545 MURPHY CANYON ROAD, 3<sup>RD</sup> FLOOR  
SAN DIEGO, CA 92123  
TELE: (858) 244-7600 FAX: (858) 836-0318

1 On December 19, 2007, I served the following documents(s):

2 **1. OFFER OF JUDGMENT**

3 Fred W Schwinn  
4 Consumer Law Center 12 S. First St., #416  
5 San Jose CA 95113  
6 Attorney for Patricia Bankston in *Pro Per*

7 in the following manner of service (check appropriate):

8 **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above. I  
9 am readily familiar with the firm's practice of collection and processing  
10 correspondence for mailing. It is deposited with the U.S. Postal Service on that same  
11 day in the ordinary course of business. I am aware that on a motion of party served,  
12 service is presumed invalid if postal cancellation date or postage meter date is more  
13 than one date after date of deposit for mailing in affidavit.

14 **BY FACSIMILE:** I transmitted all documents to all parties in this action by  
15 facsimile at the telephone number(s) indicated above and thereafter placed each such  
16 sealed envelope, with postage thereon fully prepaid for first-class mail, for collection  
17 and mailing at the Law Offices of PATENAUE & FELIX APC, San Diego,  
18 California.

19 **XX BY AIRBORNE EXPRESS:** I caused such documents to be delivered by Airborne  
20 Express to the offices of the addressee(s)

21 **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the  
22 addressee(s) above.

23 I declare under penalty of perjury under the laws of the State of California, that the foregoing  
24 is true and correct. Executed on December 19, 2007, at San Diego, California.

25  
26  
27  
28  
Sarah Reddicono